

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAROL LEWIS,

Plaintiff,

v.

Case 1:15-cv-13530-NMG

ALEX AZAR,
Secretary of the U.S. Department of Health
and Social Services,

Defendant.

**MOTION FOR HEARING
REQUEST FOR STATUS CONFERENCE**

Plaintiff Carol Lewis respectfully requests a Hearing for a status conference in this case. Since the last substantive order from the Court (in August 2017), there have been several developments that bear on potential filings with the Court. Two other Courts have addressed the issue at the core of this case (whether continuous glucose monitors are durable medical equipment and a covered Medicare benefit)¹ and one of those decisions has become final. As a result, Ms. Lewis contends that the Secretary is now barred by collateral estoppel from contesting that matter in this case and that briefing on this issue would be appropriate before the Court addresses the motions for summary judgment filed by the parties. Whether that is appropriate depends on how the Court rules on the pending motion to alter or amend the judgment. Accordingly, guidance from the Court may eliminate unnecessary filings either with this or an appellate court.

¹ At issue in those cases was a Medtronic Minimed CGM, the same device the forms the basis for the claims in this case.

A brief time line may assist the Court:

| | |
|----------------------------------|---|
| 2011 | |
| June | Ms. Lewis files a claim for Medtronic CGM coverage |
| 2012 | |
| March, June, September, November | Ms. Lewis files claims for Medtronic CGM coverage |
| 2014 | |
| February 6 | The ALJ denies Ms. Lewis' claims |
| 2015 | |
| September 25 | The MAC denies Ms. Lewis' claims |
| October 8 | Ms. Lewis files the Complaint in this case |
| 2016 | |
| November 18 | The Secretary Answers |
| 2017 | |
| January 6 | Ms. Lewis files a motion for summary judgment |
| March 2 | The Secretary files a motion for summary judgment |
| April 12 | Briefing on the motions for summary judgment is completed |
| August 22 | The Court issues an order dismissing the case on grounds of alleged mootness ² |
| September 18 | Ms. Lewis files a motion to alter or amend the judgment |
| October 26 | The Court in <i>Whitcomb</i> finds that a Medtronic MiniMed CGM is DME and a covered Medicare benefit |
| 2018 | |
| January 2 | The Secretary does not appeal the <i>Whitcomb</i> decision and it becomes final |
| January 29 | The Court in <i>Bloom</i> finds that a Medtronic CGM is DME and a covered benefit |

Previously, this Court was notified of the *Whitcomb* decision. See Docket No. 68. As noted above, the Secretary chose not to appeal that decision and it became final no later than January 2, 2018. Likewise, on January 29, 2018, the Court in *Bloom v. Azar*, Case No. 16-cv-121 (D. Vermont) (Crawford, J.) found that a Medtronic MiniMed CGM was durable medical equipment and a covered Medicare benefit. Copy attached.

² The Court's decision was founded on the fact that Ms. Lewis no longer used a Medtronic CGM. While Ms. Lewis did switch to the Dexcom G5 CGM after the claims at issue in this case, she has since switched back to the Medtronic device.

If the Court were to rule on the pending motion to alter or amend the judgment and withdraw the judgment, before the Court addresses the underlying motions for summary judgment, Ms. Lewis would like to brief the collateral estoppel issue. In order to minimize delay, Ms. Lewis is prepared to file that briefing at this time. Alternatively, briefing could be filed after the Court rules. In any event, a status conference/guidance from the Court will minimize delay and avoid unnecessary filings.

Dated: February 9, 2017

Respectfully submitted,

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CERTIFICATE OF ATTEMPTED CONFERENCE

Starting on Monday February 5, counsel for Ms. Lewis attempted to confer with Anita Johnson, the AUSA representing HHS. In response to two emails and a phone message, Ms. Johnson, failed to respond.